THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 288 of 2004.
(Old FAFO No. 395 of 1991)

U.P. State Road Transport Corporation through Regional Manager, Tanakpur, Depot., Tanakpur, District Nainital.

…**Appellant.**

Vs.

1. Smt. Tejwati, widow of late Narendra Singh
2. Prem Beeer Singh, Son of late Narendra Singh,
   Both residents of Village Gopalpurl Tehsil Baheri, District Bareilly, (Claimants)

…..**Respondents.**

Sri A.N.Sharma, leaned Standing Counsel for the appellant.
Sri G.B.Pande, Advocate, learned counsel for the respondent

Date June 27, 2006

PC: (Hon'ble B.S. Verma, J.)

The present appeal under Section 173 of the Motor Vehicles Act 1988 (***for short the Act***) read with Section 106 of the Code of Civil Procedure is directed against the judgment and award dated 6-2-1991 passed by the then Motor Accident Claims Tribunal/Additional District Judge, Nainital, in M.A.C.Petition No. 20 of 1989, Smt. Tejwati and another V. U.P.S.R.T.C. Tanakpur, whereby the compensation of Rs. 72,000/- along with interest @ 9% per annum from the date of claim petition till payment was awarded in favour of the claimants against the U.P.S.R.T.C.-appellant.

The relevant facts necessary for a just decision of the appeal are Narendra Singh, son of Ram Swarup Singh, aged 30 years and a farmer by profession earning Rs. 2000/- per month (***deceased***) lost his life in a vehicular accident, which occurred on Haldwani-Bareilly road near Tarai Foam Factory on 29-7-1988 involving UPSRTC bus No. UHC-620. It was stated that on the fateful day, the deceased was going towards Baheri by motor bike belonging to Padam Singh as pillion rider. The motor cycle was

being driven at moderate speed and on proper side. When they reached near the Tarai Foam Factory, the offending bus coming from the opposite direction at a high speed and being driven negligently by its driver struck against the motor cycle and the collision was so heavy that both the motor cyclist and the pillion-rider both suffered fatal injures and died as a result of accidental injuries. The claim petition under section 110-A of the Motor Vehicles Act, 1939 was field by the widow of the deceased for herself and on behalf of her minor son Prem Beer Singh for compensation of Rs. 10,00,000/- and an application was also moved for interim compensation under Section 92-A of the Old Act.

The U.P.S.R.T.C.-appellant filed its written statement, admitted the accident, but the manner of accident had been challenged. It was asserted that the offending bus no. UHC-620 was going from Tanakpur to Delhi and when the bus reached at the place of accident, there appeared a truck coming from opposite direction. Meanwhile a motorcyclist came at a high speed and he overtook the truck from right side and remained on the right side. The bus driver seeing the motor cyclist, applied the brakes and stopped it, but the motor cyclist lost control over the vehicle and struck against the bus. The bus driver went to police station Kichcha and lodged the report. It was alleged that the motor cycle had not number plate and the person who was driving the motor bike had no valid licence.

On the pleadings of the parties, the Tribunal framed necessary issues, recorded the evidence led by the parties, heard them and after perusing the evidence on record, came to the conclusion that the State is not a necessary party to the claim petition. Regarding negligence, the Tribunal after dealing with the matter on all relevant aspect, came to the conclusion that the accident in question occurred due to sole negligence on the part of

the bus driver and not as alleged by the U.P.S.R.T.C. On the point of quantum of compensation, the learned Tribunal first of all considered the plea of the opposite party that Padam Singh was not the owner of the motor cycle and in the facts and circumstances, no compensation could have been payable for the death of the deceased. The learned Tribunal did not find favour with the contention of the U.P.S.R.T.C. and held that there was no negligence on the part of the motor cyclist. The deceased Narendra Singh was aged 30-32 years. The income of the deceased Narendra Singh was assessed as that of a labourer to the tune of Rs. 600/- per month and out of this amount Rs.400/- per month were assessed to be contribution to his family, thereby annual loss of dependency was worked out Rs. 4,800/- and after applying multiplier of 15, the total compensation was worked out 4,800/- x 15 =Rs. 72,000/- and accordingly the claim petition was decreed along with interest @ 9% per annum. The amount of interim compensation, i.e. Rs. 15,000/- was ordered to be adjusted towards payment of compensation.

In this appeal, the appellant has challenged the finding on the point of negligence and quantum of compensation.

I have heard the rival contentions of the parties and perused the entire record including the impugned judgment and award.

At the outset, it may be noted that the accident was admitted to the appellant, but it was contended that there was no negligence on the part of the bus driver, rather the motor-cyclist was rash and negligent in driving. The general rule is that the claimant is required to establish rash and negligence on the part of the driver of the offending vehicle. In this case, the record shows that the claimant examined Jogender Singh, P.W.1 who had given eye witness account of the manner in which the accident in question

occurred. This witness is not interested to support the claimant or to implicate an innocent person in the offence. This witness lodged the report with the police on the date of the accident, wherein it was clearly mentioned that the driver of the Roadways bus was negligent in driving. On the other hand, D.W.1 jai Prakash is the driver of the offending bus. He has tried to give support to the contention of the Opposite Parties so as to save his skin. I have assessed the entire evidence on record. It has not been disputed that the F.I.R. of the accident was lodged by Jogender Singh PW 1 promptly. Though the driver of the offending bus stated that he lodged a report but no such report was filed on record. When a new version regarding accident is alleged from the side of opposite party, the burden to prove the negligence is shifted. The claimant side has prima facie established on record that there was negligence on the part of the driver of the Roadways bus. The opposite party could not lead any cogent or reliable evidence to prove the rashness or negligence on the part of the motor cyclist. The finding recorded by the Tribunal does not call for any interference on the point of negligence. I hold accordingly.

So far as the quantum of compensation is concerned, the learned Tribunal has assessed the income of the deceased to the tune of only Rs. 600/- per month. It is not challenged that the deceased was helping his father in agriculture and farming. It is true that the deceased had no independent income because his father was alive and the name of the deceased was not in revenue records. At any rate, the deceased must have been instrumental in supporting the income of his father. He was a young man and the land under cultivation is 20 Bigha, therefore, the finding of the Tribunal on the point of income cannot be said to be on khigher side. Income of Rs. 600/- per month is quite moderate and the compensation of Rs. 72,000/- worked out by the Tribunal is quite reasonable the fair. Though the Tribunal could have awarded amounts towards consortium, loss of love and affection suffered by

the widow and minor son and funeral expenses in addition to what was awarded. In any view of the matter, the amount of Rs. 72,000/- is quite reasonable. The finding of the Tribunal on this score is upheld.

For the reasons and discussion above, I find no merit in the appeal, which is liable to be dismissed on merit. However, it has been urged on behalf of he appellant that the rate of interest may be reduced suitably. In the facts and circumstances of the case, the claimants shall be entitled to simple interest@ 7,1/2% per annum instead of 9% awarded by the Tribunal. To this extent alone, the impugned order shall stand modified.

The appeal is hereby dismissed on merit. However, on the interest part, the judgment and award, under appeal, is modified to the extent that the claimants shall be entitled to simple interest ***@ 7.5% per annum instead of 9% per annum*** on the compensation amount as directed by the Tribunal. No order as to costs.

The amount, if any, in deposit be released in favour of the claimants as held above.

(B.S. Verma,J.)

RCP